BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

IN THE MATTER OF:	)	
	)	
Comprehensive Review of	)	CC Docket No. 02-6
Universal Service Fund Management,	)	
Administration, and Oversight	)	

COMMENTS SUBMITTED BY THE MISSOURI RESEARCH AND EDUCATION NETWORK IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING AND ORDER

I. Introduction

The Missouri Research and Education Network ("MOREnet") wishes to thank the Federal Communications Commission ("FCC" or "Commission") for its ongoing interest in and support of the National Education Rate Program ("E-rate"). Since the inception of the E-rate program, Missouri schools and libraries have received an average of $45.4 million annually in telecommunication and Internet access discounts. With the budgets of our schools and libraries stretched to the breaking point, E-rate has proven extremely valuable in helping our schools and libraries build and support their telecommunications infrastructure and provide Internet access to students and patrons.

MOREnet links Missouri to a world of knowledge through a statewide education network. Schools, public libraries, academic institutions and state agencies linked to the network have access to a secure broadband Internet connection, staff training, technical support and electronic resources. An

important feature of the Internet connectivity provided by MOREnet is the high-speed intrastate network consisting of six major circuits connecting several major population centers in the state. MOREnet manages nearly 1,100 local connections statewide. In sum, MOREnet's services reach 850,000 students and 86,000 faculty and staff in 513 school districts, as well as 358 public library buildings serving 5.1 million Missourians.

In addition to serving as the state E-rate resource for Missouri at the request of the Missouri Department of Elementary and Secondary Education and the Missouri State Library, MOREnet files E-rate applications each year as a consortium for Internet Access on behalf of all MOREnet customers. Because MOREnet finds itself in the position as state E-rate coordinator and E-rate applicant, MOREnet offers a dynamic and unique position on the future of E-rate. MOREnet welcomes the opportunity to submit these comments before the Commission for consideration.

II. The E-rate Program in Missouri

The National Education Rate program in Missouri has proven essential in bringing telecommunications and Internet access to schools and public libraries. A vast majority of E-rate applicants in Missouri are considered rural under the rules and definitions of the program.[1] While large Missouri applicants such as the Kansas City Public School District and the St. Louis

[1] These categories are based on definitions adopted by the U.S. Department of Health and Human Services Office of Rural Health Policy (ORHP/HHS). www.sl.universalservice.org.

Public School District struggle equally with smaller rural school districts for adequate funding for technology advancements, the advent of E-rate has brought a new level of technology consciousness to smaller and often more remote school districts and libraries in this state. Certainly, the primary goal of E-rate should be to bring equitable access to each applicant, regardless of size or location. There are a considerable number of Missouri schools and libraries who do not currently apply for E-rate due to lack of knowledge about the program, fear of that paperwork involved, or the low discounts available to their particular organization. Simplifying, streamlining, and strengthening the program to address the needs and concerns of all applicants is a necessity.

Because MOREnet serves as the state E-rate resource, maintains a state E-rate coordinator on staff AND also is an E-rate applicant, MOREnet is in an indelible position of working with schools and libraries to address their concerns and needs during the application process, while also experiencing the application process first-hand. From this perspective, one truth about the National E-rate Program is crystal clear: the application process is excessively burdensome, confusing, and intimidating for the average applicant. A portion of Missouri schools and libraries no longer even consider applying for E-rate funds because they do not have the personnel to complete the applications or interpret the associated rules and regulations of the complex program. Many believe the paperwork is too cumbersome for a

small discount on monthly telephone bills. Still more worry they will unintentionally make a mistake on their application which results in a funding denial, or worse yet, liability for the application preparer. While the last comment sounds extreme, it is a very real fear of those who complete the E-rate application at an organizational level.

Almost all applicants express dismay and discouragement when navigating the quagmire of E-rate policy. Further complicating the process is the odd dynamic between the FCC and the Universal Service Administrative Company ("USAC"). Because the FCC does not codify all E-rate rules and often leaves USAC to deal with situations as they arise, there is no solid body of law to refer to when considering what is proper under E-rate rules and what is not. The FCC's reliance on appellate decisions as a precedent setting mechanism fails because appeals are processed and decided long after the issue presents itself for an applicant.

This set of comments on behalf of the Missouri Research and Education Network intends to address groundbreaking reform suggested by the FCC in the NPRM for sprawling E-rate change. However, it is important to note that even with such sweeping change, E-rate is only as successful as the applicants who apply for it annually and use the discounts as they were intended by the program's creators. MOREnet urges the Commission to carefully weigh the hundreds of comments this NPRM surely will generate and remember this comment process is not about individual applicants or

service providers or sets of forms. This process is about taking a good program and making it better. A strong program which encourages success in applicants, creates opportunity for students, and works to fend off fraud by the implementation of effective anti-waste measures will be a program that survives well into the future.

III. Summary of Contents

MOREnet commends the FCC for their efforts in implementing and administering the E-rate program. Currently, E-rate attracts negative attention by glaring examples of waste, fraud, and abuse by very few applicants. While E-rate ideally would be a much better program with some well-planned strategic changes, MOREnet does not believe the program is the "boondoggle" that some politicians proclaim[2]. Undoubtedly, this NPRM shows the commitment of the Commission to make the program stronger, more efficient, and more attuned to applicant needs.

Obviously, no single commenter is in the position to comment on each question proposed by the FCC in the Notice of Proposed Rulemaking. The Commission seeks opinion on sweeping reform to the program and almost encourages a commenter to envision a completely rewritten E-rate program. MOREnet is pleased to submit comments on the questions raised by the Commission that clearly impact the E-rate applications of MOREnet and Missouri schools and libraries to the greatest extent.

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[2] Representative Joe Barton (R-TX) has recently referred to the E-rate program as a boondoggle. http://energycommerce.house.gov/108/News/06062005_1545.htm.

IV. Answers to Requests for Comment

A. Review of USAC Performance & Review of Administration

MOREnet has no specific issue with USAC as an administrating entity and can offer no alternative entity that would improve the program's efficiency and/or effectiveness. MOREnet has no evidence to believe this program would be better served under the aegis of another federal agency or as part of the federal treasury.[3]

MOREnet wishes to comment on the inherent design of the E-rate program *inter alia*, as it is flawed and confusing at the very best. Currently, the FCC is the "owner" of the program and USAC administers the program. Theoretically, this design should work well for all parties. To suggest that the FCC owns the program means that the FCC is responsible for the creation, growth, direction and general well-being of the program. To suggest that USAC administers the program means that USAC follows the mandates of the FCC and merely works to complete the goals of the program as determined by the Commission. These ideals could not be further from the realities of the program. Rather, the impression and actions of the FCC and USAC almost show a reversed role relationship. USAC creates policy and develops guidelines and publishes them on their website. The FCC is a

[3] Maintaining E-rate funds as part of general revenue funds under the control of the United States Treasury has been one alternative mentioned as waste, fraud, and abuse in the program. Such a decision would mean sure death for the program, as it would be subject to budget constraints and cuts by the United States Congress.

seemingly silent partner who only is activated if a formal appeal is filed or if Congress calls upon it with questions or concerns about the program.

For the owner/administrator relationship to work effectively, the FCC must decide to play an active role in E-rate and to affirmatively and proactively codify new rules and regulations as necessary. Currently, USAC has taken extreme discretion in making policy decisions and they are not bound by any safe-harbor rules…what the policy is today may not be the policy next week. Because technology is a fluid concept, USAC is often placed in the uncomfortable position of making on-the-spot decisions which seriously impacts an applicant's funding. This is the single most damaging factor to the future of E-rate and frustrates applicants and observers beyond compare.

Because the FCC provides no strong guidance, USAC simply has no precedent in many situations to rely on when making decisions. From the very front line of those who work at the Client Services Bureau to executives in the organization, USAC cannot be expected to make final and firm decisions without direction from the parent organization. Even if USAC makes a decision about a particular application, it can not be considered final until going through the entire appellate process. If it isn't appealed, an average applicant can't rely on the veracity or stability of the decision because it is a USAC level decision. If the FCC wishes to continue ownership of the program, the FCC must create a comprehensive body of law regarding the rules of the program that is easily accessible and understood by everyone.

If an applicant has questions about a particular procedure, the applicant should not have to rely on a changeable web page for the answers. There should be a governing body of law which serves as a resource in answering an applicant's questions.

Further, the FCC should not rely on the appeals process as a reliable means of setting precedent. There is no uniform rule as to whether an applicant should appeal to USAC or the FCC; rather it is the applicant's choice. Secondly, there is no codified timeline for when an appellate decision should be reached. Often, applicants learn the fate of their appeal over two years after filing it. Such timelines are unacceptable. Obviously, the applicant suffers because they receive no funding on the appeal issue during that time. But also at concern is that while the appeal is pending, applicants have no direction on how to proceed with the appeal issue. While an appeal is pending, untold numbers of other applicants are committing the very same "violation" that lead to the original appeal. It is confusing and causes much frustration among applicants. Appeals should be decided and opinions issued within 90 days of the file date. The inherent meaning of the appellate process is the opportunity to be heard by a higher body.

Imagine a world where receiving a $100 speeding ticket meant you could go to the local municipal court or you could go directly to the United States Supreme Court to argue evidence that while you were driving on a particular road, the speed limit sign was changed to lower the limit from 75

to 70 and you were driving 72. Imagine you could choose either court to hear your case with appropriate jurisdiction, but you had no rule which stated the correct speed limit and only a webpage which stated the speed limit signs would be changed on the day you received your ticket. You make an educated guess about the best forum to hear your case, but then two years pass and you never hear a final decision. The outrage at such a process would be palatable and such a situation would not be allowed in this country; but that is exactly what we are condoning in the E-rate program by allowing it to continue as it currently exists.

Ministerial Errors and Intentional Fraud

Ministerial errors are an unfortunate aspect of the E-rate program. From working closely with E-rate applicants, the majority fear they will misinterpret program requirements and cause an error in their application. While such errors can create unintentional waste, they certainly do not create fraud or abuse. Ministerial errors are simple testament to the fact that the E-rate program is difficult to understand and full of pit-falls that can unknowingly catch an applicant, resulting in a denial of funding. It is difficult to think of another program which completely denies applicants based on violations of rules that do not even exist in most cases. Unfortunately, schools and libraries' requests have been denied when they made the smallest clerical errors, while the program has paid substantial

amounts to vendors who were later found to be willfully violating the program's rules.

Ministerial error and intentional error should be treated differently because the element of intent does not exist in ministerial errors. The Commission asks how the different types of error should be treated, and it's very simple: if the nine elements of common law fraud[4] can be found in an applicant's action, then that applicant should be charged with intentional fraud and abuse of the E-rate program. If the nine elements of common law fraud cannot be identified, then it should be considered ministerial error.

MOREnet does not advocate that ministerial error should be excused where the error clearly violates a written and codified E-rate rule. In such cases, the money awarded as a result of the error, albeit unintentional, should be returned within ninety days if the error clearly contravenes written regulation. Alternatively, error based on administrative procedures which are not codified should not be assessed. Without codification, an applicant cannot be on notice that their error was in fact against program rules. To assume such is to assume that applicants can read the mind of the Commission and the Administrator. Such an assumption is preposterous. Simply put, an applicant should not receive a funding denial based on a USAC created policy that is simply posted to a web page or announced at

[4] The nine elements of common law fraud are: 1) a false representation, 2) having to do with a past or present fact, 3) that is material, 4) and the representor knew it to be false or asserted the fact without knowledge of whether it was true, 5) with the intent to induce the other person to act, 6) and she/he is induced to act, 7) in reliance on the representation, 8) a suffering of damages, 9) attributable to the misrepresentation.

annual training. Neither of those methods is reliable in reaching E-rate applicants. The announcement of new rules and policies should be uniform and done in a manner that indicates formality to applicants.

B. Performance Measures

The Commission seeks comment on how to measure the effectiveness of the E-rate program. Missouri agrees that measuring such program effectiveness is a difficult task. The benefit of E-rate funds is almost transparent; clearly it exists, but is hard to quantitatively measure.

The FCC questions if this quantitative measurement is within their jurisdiction to collect. However, why the FCC would not naturally consider such important information as theirs to collect is more puzzling. As true owners of the program, the FCC has the discretion to collect whatever information is deemed necessary to show the true effects and benefits of the program. Failure to collect such information in order to support the program or improve the program where necessary is oversight on behalf of the FCC. There is no other appropriate agency to collect, analyze, and disseminate this information in support of the program. The goal of the FCC should be a strong E-rate program and increased participation by applicants and potential applicants. Without measuring the effects of the program, it is impossible for the FCC to know if the missions and goals of the program are being met. As a result of this NPRM, at the very minimum, the FCC should create a clear and concise mission statement for the E-rate program and a set

of definable goals and deliverables by which to measure the ultimate success of the program.

Simply measuring the number of classrooms connected to the Internet does not adequately reflect the power of E-rate because the program has unquestionably brought the percentage of Internet connected classrooms to the highest level ever. Rather, the most important indicator of the success of the program is how many classrooms are *staying connected* to the Internet. It is important to note that the benefits of E-rate do not end because a classroom is connected once; it must stay connected for an impact on students to occur. Schools and libraries staying connected to the Internet and advancing education because of that connection is the true marker of the program's success. Likewise, the number of applicants who continue to be able to pay their telecommunications bills each month or wire a new building for connection to the network is a marker of success.

A simple annual survey requesting information about E-rate participation, Internet connection, telecommunications access, and funding could collect valuable information for the Commission regarding the on-going impact of E-rate. The survey could be web-based and simple to complete, asking basic questions about E-rate participation. Such feedback and comments from actual applicants would not only provide valuable information to the Commission, but would expose the Commission to the trends and the needs of the actual applicants. If a survey method sounds

daunting or overly burdensome for the Commission, several simple tracking questions could be added to the end of any given E-rate application form. Asking applicants to provide information about their E-rate use and needs would not be overly taxing.

Libraries and private schools should also be surveyed about their E-rate use. Both are strong participants in the program and it is ludicrous to ignore the benefits on these entities. Clearly, the benefits of the program to these institutions are no less than to public schools. A showing of the benefits to millions and millions of library patrons who access the Internet primarily from the local library speaks volumes about the success of E-rate. In Missouri alone, approximately 5.1 million citizens benefit from the Internet connections available at local libraries on any given day because of E-rate discounts. Such statistics should not be ignored, but rather touted in defense of the E-rate program. The impact of the program upon the average American is tangible when viewed by these numbers and statistics.

Critics who suggest E-rate has fulfilled its purpose by connecting people to the Internet simply based on the notion that most schools and libraries are now connected fail to understand why E-rate is important. Bringing technology to the classrooms and libraries was merely the impetus for the 1996 Telecommunications Act. However, maintaining the technology and using it to its fullest potential should be the long-term purpose and the defined mission statement of E-rate. To believe that 98% of classrooms in

America are now connected to the Internet and thus E-rate funding can be discontinued is flawed logic. Under such assumptions, it is entirely possible that next year that 98% becomes 50% after schools no longer have the funds to pay for Internet Access. The FCC must set specific goals for the program and take ownership of E-rate to ensure that the goals are met in a timely and efficient manner.

C. Program Management

A formulaic approach to fund distribution absolutely should not be adopted. It is difficult, if not impossible, to create any formula which would treat each E-rate eligible entity as equitable. Further, a formulaic approach to fund distribution will make the program more difficult to administer for the FCC and USAC and more confusing for applicants.

The formulaic approach invites numerous questions. How would the formula be configured? How could equitable access to funds be guaranteed across a diverse pool of applicants? How would standards for applying for the fund distribution be set? Would rural schools be disadvantaged by the formula? How would the application process change? How would waste, fraud, and abuse be avoided? Who would administer the formula and distribute the money? There are so many important considerations of the formulaic approach that it is almost impossible to take a position on the issue until these questions are answered fully by the Commission. But, at a minimum, it is important to remember that E-rate receives enormous

criticism for being a confusing program that experiences significant waste, fraud, and abuse. Changing the fund distribution process only exchanges the program's current problems for a new set of problems resulting from the formula configuration. The FCC and USAC struggle to control the program under its current design. A sudden switch in the distribution of money would be extremely difficult to administer and further muddy the waters of E-rate, rather than making the program more efficient.

A formulaic approach to fund distribution opens the program to the extent that managing the program would be almost impossible. E-rate is a beneficial program, however having applicants that understand the program and use the program to their benefit within the confines of the rules and regulations is what ultimately strengthens the program. Despite the program's popularity, it is not rare to encounter a school or library administrator who has no idea what E-rate is or what it is used for. The appeal of simply receiving funds based on a formula if you just fill out one form is too strong. Some applicants will exploit the opportunity and the occasion for waste, fraud and abuse will skyrocket. A formulaic approach will not further the goals of the program, and in fact, may impede the goals and increase criticism overall of the program.

Of special concern to MOREnet is the effect of a formulaic approach on consortium applications. Currently, MOREnet provides Internet Access to 98% of schools and libraries in Missouri under an agreement with the

Missouri Department of Elementary and Secondary Education and the Missouri State Library. Based on the authority of those agreements and individual letters of agency from each customer, MOREnet files for discounts on Internet Access and telecommunications on behalf of our customers. A formulaic approach would be very difficult to configure in relation to large consortiums such as MOREnet. Missouri schools and libraries have come to rely heavily on the services offered by MOREnet and to change the program to the extent that services by consortiums were no longer funded would cause cessation of Internet Access services to MOREnet customers. These schools and libraries would then be forced to procure Internet Access through a traditional service provider at a substantially higher cost than the state education network.

A change to a formulaic approach would be a Herculean effort. The Commission would not only have to figure out the logistics of the formulaic approach, but would have to codify the appropriate rules and provide marketing and training so that the E-rate community was adequately informed of the changes. The Commission has struggled to address the concerns and problems in the E-rate program to this point. Changing the fund distribution merely puts a band-aid on bigger problems in the E-rate program that must be addressed and dealt with appropriately.

D. Application Process

The E-rate program would be significantly more efficient and streamlined if the application process was altered to consider the needs of the applicants. Currently, many applicants choose not to apply at all for E-rate funds because the burden and confusion of completing the paperwork does not justify the funds received in the end.

Form 470

The Form 470 and its competitive bidding requirements are particularly confusing for many applicants and should be significantly shortened, if not eliminated. The Form 470 should be analyzed from the perspective of Priority 1 and Priority 2 services.

Priority 1 Services

The Form 470 for Priority 1 services should be eliminated, or at the minimum, altered so that applicants may apply on a multi-year basis.

The Form 470 for Priority 1 services serves little purpose but to merely identify an applicant by name and list the services the applicant is considering for E-rate discounts. The form also begins the competitive bidding process. However, most applicants do not receive numerous bids on Priority 1 services such as local and long distance phone service and so there is no true competitive bidding environment. Rather, service providers use the information found on the Form 470 as a means to gather information about potential customers in hopes of selling them other, non-related products. If the Form 470 was removed from the application process,

applicants could certify on the Form 471 that all local and state procurement laws were met. This certification would provide a safeguard against waste, fraud, and abuse while streamlining the process as well.

The Commission and USAC would not be placed in a compromising position by the elimination of the Form 470. The Form 470 serves little, if no, purpose to USAC as it requires no action by USAC except for the generation of a Receipt Acknowledgment Letter. If anything, the Form 470 creates additional burdens on the applicant and the Administrator. Once the Form 471 is filed, the Administrator must compare the services requested on the form to those listed on the Form 470 to ensure they match. Such meaningless tasks seriously slow down the application approval rate and serve no known purpose.

Removing the Form 470 would also shorten the application process. Applicants would be required to complete one less form and USAC would remove a huge administrative burden by not tracking the Forms 470 for each applicant. Instead, applicants could merely submit the Form 471 in the filing window and list the services for local and long distance phone service, cell phones, pagers, etc. that they have chosen.

All Priority 1 services are cost regulated to some extent by the FCC. Therefore, it would not be difficult to ascertain attempted fraud, abuse, or waste on a particular application by reviewing the dollars requested in comparison to the services requested. The easy cost comparison, with the

Form 471 certification of compliance with local and state procurement laws, would maintain the integrity and purpose of the program while streamlining it, making it more efficient and catering the goals of the program to the applicant needs.

In the alternative, creating a Form 470 that allowed for a multi-year use when applying for Priority 1 services would be very beneficial to the program. In such a case, a small rural library in Missouri could make a simple application once every two years for their phone services. This would greatly increase applicant participation because the form would ideally be easier to complete and would not have to be done on a yearly basis. For applicants only applying for Priority 1 services, little if nothing changes for an applicant on a yearly basis and so there is no true need for completing a new Form 470 each and every year. Applicants who experience a change in services or an immediate need to change in service providers could complete a service substitution or a SPIN change to accomplish those goals.

Priority 2 Services

The Form 470 for Priority 2 services should either be shortened or be eliminated. A multi-year Form 470 is not feasible because of the fast change in available technology and the fluctuations in available pricing.

For the reasons stated above, the Form 470 could also be eliminated for Priority 2 services. Requiring applicants to certify that local and state

procurement laws have been met is safeguard against waste, fraud, and abuse.

At the very minimum for both Priority 1 and 2 services, the Form 470 should be simplified. Currently, there are too many stumbling blocks to the form which catch the naïve applicant off-guard and create funding denials. For example, Block 2, Question 7 requires the applicant to mark if they are applying for tariff, month-to-month, or contractual services. State E-rate Coordinators generally advise an applicant to mark each of the boxes. If the applicant only chooses month-to-month and later discovers that it would be more cost-effective to enter a multi-year contract, the applicant is effectively precluded from signing that contract because it was not indicated on the Form 470 that contract was an option. Such seemingly innocuous questions can have a tremendous impact on the future of the applicant's E-rate application. A more simple form would be useful and easier for applicants. Because the Form 470 itself requests no discounts but merely solicits bids for services an applicant *may* want, the level of detail should not be as burdensome as it currently is. A mere listing of proposed services, without the burden of listing every recipient of service and attestation to availability of ineligible items such as desktop software should not be required. It does not aid responding service providers and discourages applicants who are wary of complex paperwork. A simplified Form 470 would encourage applicants to apply and avoid pitfalls down the road of the application

process. Better yet, the elimination of the Form 470 would be appreciated by applicants who gain little, if nothing, from the posting of the 470 except for sales pitches and telemarketer calls on unrelated technology products.

Program Complexity

A significant number of Missouri schools and libraries choose not to apply for E-rate funds because of the program's complexity. The paperwork is complex and burdensome. Most applicants do not have a person on staff who is wholly dedicated to E-rate, rather most are also teachers or technology coordinators who assume E-rate duties in addition to their primary job. For many smaller applicants, saving 20% on their monthly phone bill does not justify the frustration and expense of personnel hours to complete the application process. Requiring less forms, making the rules of the program easy to find and easy to understand, and reworking the program so that funding approvals do not take so long to receive would undoubtedly entice most non-participating schools and libraries.

E-rate would benefit from positive marketing. A shocking number of potential applicants are unaware of E-rate and many more school administrators and library directors may have heard of it, but are unaware of the purpose and goals of the program. Many do not know that most states have an E-rate coordinator available to assist them with their E-rate questions. Most do not understand the ownership position of the FCC and the administrative position of USAC. For schools and libraries to participate,

they have to understand the goals and mission of the program and the benefits of making application. If the FCC could convey that to potential applicants, participation in the program and respect for the program would grow.

Timing and Delay Issues in the Application Process

Timing and delay issues severely limit the E-rate program. The most intense criticism toward the program is often pointed at the amount of time it takes to navigate the application process, and then wait for a funding commitment decision letter. The delays cause mistrust in the program, as well as general frustration as applicants wonder if they have completed the forms incorrectly or if USAC is merely delayed in funding applications. One of the hardest things for applicants to understand is that at any given time in an E-rate year, the applicant will have two open E-rate applications. Most likely, the applicant will be working on receiving the actual reimbursements or discounts from the previous year's application while completing application forms for the next E-rate year. The number of applicants who never actually receive the discounts after they have been approved simply because they do not know there are forms to be completed after receiving a funding commitment letter is astounding. These applicants assume that because they have received a funding letter and because they are already working on the application for the next year, there is simply no work left to be completed for the previous year. It simply never occurs to the average

applicant that 12 to 18 months after completing an application, the process would not be complete. Ideally, the entire application process will be readjusted so that it can be completed and finished in 12 months. This would allow applicants to close the file on the funding year and begin anew on the next application process without managing two years worth of applications.

To further streamline the process, the Program Integrity Assurance team should begin to review Forms 471 as they are received in the filing window, as opposed to waiting for the filing window to officially close. This would begin work on the applications several months earlier than what currently occurs, and it would encourage applicants to complete their Forms 471 as soon as possible, rather than waiting until the day the window closes.

The appellate process also causes extreme frustration with applicants. As addressed above, the option of either appealing a funding decision to USAC *or* the FCC is ridiculous. There should be standard appellate procedures that applicants are expected to follow. Why are applicants given a choice of appeal levels and how can an applicant determine the best avenue for the disposition of their appeal? There are no answers to these questions.

The long wait for appeal decisions by applicants is unacceptable. The FCC should create deadlines for both itself and USAC to restore confidence in the program. Applicants are given absolutely no leeway when missing an important deadline, and it's important the FCC and USAC be treated similarly. An applicant can not have faith is the purpose of the appellate

system if an answer is expected months and months after the filing of the appeal.

The FCC absolutely must construct a system for receiving appeals, considering the evidence, and releasing an opinion within a reasonable amount of time. Certainly, 12 to 24 months after filing an appeal is not reasonable. The entire point of an appeal is the manifest pursuit of justice with notice and opportunity to be heard. The current appellate procedure provides neither. The FCC should create a panel of three Commissioners responsible for deciding appeals in a timely manner. The Commission should meet on a regular and publicized scheduled. Opinions should be issued within 60 days of the panel meeting. If the FCC is unwilling or unable to commit to a rigorous appeal schedule, the appeals should be directed to an administrative law judge in an appropriate tribunal for prompt consideration. Applicants want the formality of a legal process when approaching a funding appeal. It is disconcerting to appeal an important funding denial and have no idea what the result might be or when an opinion might be issued. The current system serves no benefit and should be changed.

Delays by USAC should be rectified by deadlines imposed by codified rules and regulations. Delays plague the E-rate program. For example, earlier this year, funding waves were significantly delayed from the start date of the previous year. This delay was because the FCC had not approved Program Integrity Assurance ("PIA") procedures (although PIA had been

going on for several months by this point). Although it appears as simple as the FCC had not approved procedures and once it had, funding could begin, the situation on the applicant side was much more intense. To begin with, everyone began to wonder if there would be any E-rate funding at all that year and that sort of doubt seriously demeans the program. Secondly, and more practically, applicants who expected to receive discounts on their monthly bills beginning with the start of service on July 1st had no idea if they were going to receive funding at all…much less how to pay the full price of the monthly bill. Situations such as these make the program so difficult and so much more taxing on both the administrator and the applicant than it really need be. If PIA guidelines had been approved in a timely manner, the entire concern faced by applicants over the July 1 billing dates would have been avoided. Simple considerations such as that are the sorts of changes that the average applicant seeks in the program.

The Commission should set target dates or deadlines for the processing of applications. If only from a logistical standpoint, if there are deadlines for submitting the application, there should be a deadline for processing the application. Applications should be reviewed at they arrive in-window and not held until the window officially closes. If PIA could begin to review applications as they arrive, the entire timeline of E-rate could move forward significantly. Ideally, an applicant could complete the paperwork for a particular funding year before beginning paperwork for the next funding year

– the crossing of funding years is exceptionally confusing to most applicants. Additionally, the knowledge that review of the application begins when the application is received will encourage applicants to file early, rather than waiting until immediately before the window closes. This would ease pressures on USAC to deal with thousands of applications as once. For administrative ease, the window could still exist and applications still could be filed in the window only, however they would simply begin the review process once the application arrives at the processing center.

E. Competitive Bidding

Competitive bidding is a unique component of the E-rate program. The intent and purpose of competitive bidding certainly is well-understood, however in practice the competitive bidding requirement is not meeting its goals as envisioned by the FCC. Many applicants fail to receive any bids for services, or may only receive one bid from the single available service provider in that area. Beyond that, service providers often use the Form 470 as a tool to garner information about applicants as potential customers. In a number of cases, only one service provider for a particular service exists in a rural area and so there is no way to have competitive bidding. Applicants are advised to memorialize in writing that they received no bids or only one bid for a particular service. However, each year PIA questions how receiving little or no bids is possible and ignores the realities of living in small rural communities. Any rule requiring three competitive bids per service would

preclude a vast number of rural schools and libraries from applying for E-rate discounts. Rural applicants cannot comply with such a rule because there simply are just not three service providers offering the same service in the majority of small communities.

Ideally, competitive bidding should be abolished and applicants would certify on the Form 471 that they have met all state and local procurement laws. This certification would be sufficient to guard against waste, fraud, and abuse and would help to streamline the application process.

F. Forms

As discussed above, Form 470 should be eliminated. It does not facilitate competitive bidding and serves no other purpose. MOREnet takes no other specific position with Forms 471, 486, and 472.

G. Disbursements

Reimbursements should be sent directly from USAC to the applicant, rather than

to the service provider. By requiring the service provider to sign the Form 472, the service provider is aware the applicant is seeking reimbursements. It serves no purpose for the provider to receive the check and then forward it on to the applicant. Sending the check directly to the applicant streamlines the application process and allows the applicant to receive the reimbursement much quicker. Removing the service provider as the middle

man in the reimbursement process also makes the process easier and more understandable to the applicant.

H. Audits

Applicants should not be required to obtain annual independent audits evaluating compliance with the program. Such a requirement is overly burdensome, baseless, and would certainly defer a number of applicants from participating in the program because of cost concerns. Such a requirement also adds another layer of complexity to the program that will further confuse and deter schools and libraries from applying.

The costs and burdens of independent audits to schools and libraries are clear: the budgets of most applicants are already stretched to the absolute breaking point and the cost of paying for an independent audit is not feasible. Paying for an audit is also pointless. It makes absolutely no sense to pay several hundred dollars for a comprehensive audit in order to receive $600 in discounts for local and long distance phone services. Additionally, auditors qualified to make a review of an applicant's E-rate practices will most likely not be readily available in smaller towns and remote communities. The burden should not be placed on an applicant to find an auditor that meets SLD standards.

Audits should only be done on a random basis (pull from a random sample) or in cases where wrongdoing is suspected. Money received should not be a threshold, as a $3 million application can be managed and completed

as well as a $3,000 application when done by someone well-versed in E-rate rules and regulations. Proactively requiring an audit as part of participating in the E-rate program is a waste of funds, and further weighs down a program that is already collapsing under policy decisions and application pre-requisites. In cases where audits are ordered by USAC, those audits should be paid for by USAC with one caveat: in cases where intentional fraud, waste, or abuse is determined by a court of law, the perpetrator should be required to reimburse USAC for the costs of the audit which uncovered the wrongdoing.

Audits ordered by USAC should only evaluate compliance with Commission rules. To make a finding of intentional fraud, negligence, or unintentional ministerial error places tremendous power in the hands of an auditor who may not have the necessary experience with the program to make such a finding. In fact, if most of these audits are outsourced to firms across the country, it is almost a guarantee that the field auditors will not have the expertise in the program to make such a finding. An erroneous finding of intentional fraud could prove devastating for the applicant and the authorized signer of the application. If waste, fraud or abuse of the program is suspected by an audit, it should be referred to USAC for active investigation and findings of fact. USAC findings of fact that suggest waste, fraud and abuse should be referred to appropriate law enforcement officials for prosecution.

I. Waste, Fraud, Abuse

Setting a cap on the amounts that applicants request would not be effective in preventing waste, fraud, and abuse for Priority 1 services. Additionally, the 90% discount for telecommunications and Internet Access should not be altered, as there appears to be relatively little waste or abuse with Priority 1 applications.

The majority of the cases of waste, fraud, and abuse involve Priority 2 services for high-discount applicants. The current "two-in-five" rule for Priority 2 requests is a promising method to combat waste, fraud, and abuse and is preferable to a simple dollar cap on Priority 2 requests. The "two-in-five" rule allows applicants to actively seek discounts for large internal connection projects, but prevents large applicants from doing so each year. This opens opportunity for smaller applicants to receive funding for Priority 2 applications.

In any event, a much easier way to reduce waste, fraud and abuse than to track the "two-in-five" rule is to adjust entire discount matrix so that no single Priority 2 applicant receives a discount as high as 90% for any Priority 2 service. By requiring applicants to place more of a monetary stake in the services they request, it logically follows that waste, fraud and abuse will decrease. No applicant should receive higher than a 70% discount. This only requires the highest-level applicant to pay for 30% of the services they choose to order. 30% is not overly burdensome request for a legitimate applicant.

Requiring applicants to place a vested monetary interest in their E-rate request requires greater oversight by the applicant as a whole, such as greater participation in the request by the school board or library directors.

"Best practices" for the program should undoubtedly be publicized. It only benefits the entire E-rate community. There is absolutely no point in withholding information such as best practices that could significantly benefit program applicants.

A specific rule forbidding waste, fraud, and abuse would be of definite value. The Commission's action in creating and codifying a rule shows the Commission's commitment to preventing it. At the absolute minimum, waste, fraud and abuse needs to be adequately defined so that applicants are aware of what constitutes it. Perhaps the biggest downfall of the E-rate program is the assumption that applicants can be held responsible for something that the Commission itself has never formally defined. A well-written, clear, and concise rule puts applicants on notice of what the Commission expects.

The Commission should publicize the list of debarred parties on both the FCC and USAC websites. If the appropriate findings have been made to disbar a party from the program, then the release of the information to applicants is appropriate and does not defame the disbarred party in any manner. There is no basis for keeping such information private.

Service providers under investigation should be required to proactively inform applicants of the investigation prior to bidding for services requested by the applicant. This puts the applicant on notice and allows the applicant to figure that information into the factors for selecting a provider. A service provider under investigation may seriously affect an applicant's E-rate application because often funds are held while an investigation ensues. This situation has occurred in Missouri and concerns a particular service provider under investigation. While the investigation continued, the applicant received no funding for the E-rate services and was ineligible for the Good Samaritan program until an official finding was made. This unfairly punishes the applicant who had no idea the provider was under investigation.

Conclusion

The Missouri Research and Education Network reiterates its appreciation for the support the Commission has provided to the Universal Service Program for Schools and Libraries. MOREnet believes E-rate to be a valuable program that has impacted the lives of millions of Missourians for the better. We stand ready to assist the commission on these and other issues as the program moves forward.

Respectfully submitted,

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